

(4) Review of facility design and construction

The Board shall review the design of a new Department of Energy defense nuclear facility before construction of such facility begins and shall recommend to the Secretary, within a reasonable time, such modifications of the design as the Board considers necessary to ensure adequate protection of public health and safety. During the construction of any such facility, the Board shall periodically review and monitor the construction and shall submit to the Secretary, within a reasonable time, such recommendations relating to the construction of that facility as the Board considers necessary to ensure adequate protection of public health and safety. An action of the Board, or a failure to act, under this paragraph may not delay or prevent the Secretary of Energy from carrying out the construction of such a facility.

(5) Recommendations

The Board shall make such recommendations to the Secretary of Energy with respect to Department of Energy defense nuclear facilities, including operations of such facilities, standards, and research needs, as the Board determines are necessary to ensure adequate protection of public health and safety. In making its recommendations the Board shall consider, and specifically assess risk (whenever sufficient data exists), the technical and economic feasibility of implementing the recommended measures.

(c) Excluded functions

The functions of the Board under this subchapter do not include functions relating to the safety of atomic weapons. However, the Board shall have access to any information on atomic weapons that is within the Department of Energy and is necessary to carry out the functions of the Board.

(Aug. 1, 1946, ch. 724, title I, § 312, as added Pub. L. 100-456, div. A, title XIV, § 1441(a)(1), Sept. 29, 1988, 102 Stat. 2077; amended Pub. L. 102-190, div. C, title XXXII, § 3202(b)(2), Dec. 5, 1991, 105 Stat. 1582; renumbered title I, Pub. L. 102-486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 112-239, div. C, title XXXII, § 3202(b)(1), Jan. 2, 2013, 126 Stat. 2218; Pub. L. 116-92, div. C, title XXXII, § 3202(b), Dec. 20, 2019, 133 Stat. 1965.)

Editorial Notes**AMENDMENTS**

2019—Subsec. (a). Pub. L. 116-92 inserted “, including with respect to the health and safety of employees and contractors at such facilities” before period at end.

2013—Pub. L. 112-239, § 3202(b)(1)(A), substituted “Mission and functions” for “Functions” in section catchline.

Subsec. (a). Pub. L. 112-239, § 3202(b)(1)(C), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 112-239, § 3202(b)(1)(B), (D)(i), redesignated subsec. (a) as (b) and substituted “Functions” for “In general” in heading. Former subsec. (b) redesignated (c).

Subsec. (b)(5). Pub. L. 112-239, § 3202(b)(1)(D)(ii), inserted “, and specifically assess risk (whenever sufficient data exists),” after “shall consider”.

Subsec. (c). Pub. L. 112-239, § 3202(b)(1)(B), redesignated subsec. (b) as (c).

1991—Pub. L. 102-190 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

§ 2286b. Powers of Board**(a) Hearings**

(1) The Board or a member authorized by the Board may, for the purpose of carrying out this subchapter, hold such hearings and sit and act at such times and places, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such evidence as the Board or an authorized member may find advisable.

(2)(A) Subpoenas may be issued only under the signature of the Chairperson or any member of the Board designated by him and shall be served by any person designated by the Chairperson, any member, or any person as otherwise provided by law. The attendance of witnesses and the production of evidence may be required from any place in the United States at any designated place of hearing in the United States.

(B) Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(C) If a person issued a subpoena under paragraph (1) refuses to obey such subpoena or is guilty of contempt, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Board) order such person to appear before the Board to produce evidence or to give testimony relating to the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt of the court.

(D) The subpoenas of the Board shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(E) All process of any court to which application may be made under this section may be served in the judicial district in which the person required to be served resides or may be found.

(b) Staff

(1) The Board may, for the purpose of performing its responsibilities under this subchapter—

(A) in accordance with section 2286(c)(6) of this title, hire such staff as it considers necessary to perform the functions of the Board, including such scientific and technical personnel as the Board may determine necessary, but not more than the equivalent of 130 full-time employees; and

(B) procure the temporary and intermittent services of experts and consultants to the extent authorized by section 3109(b) of title 5 at rates the Board determines to be reasonable.

(2) The authority and requirements provided in section 2201(d) of this title with respect to officers and employees of the Commission shall apply with respect to scientific and technical personnel hired under paragraph (1)(A).

(3)(A) The Board shall have an Executive Director of Operations who shall be appointed under section 2286(c)(6) of this title.

(B) The Executive Director of Operations shall report to the Chairperson.

(C) The Executive Director of Operations shall be the senior employee of the Board responsible for—

- (i) general administration and technical matters;
- (ii) ensuring that the members of the Board are fully and currently informed with respect to matters for which the members are responsible; and
- (iii) the functions delegated by the Chairperson pursuant to section 2286(c)(3)(B) of this title.

(4) Subject to the approval of the Board, the Chairperson may organize the staff of the Board as the Chairperson considers appropriate to best accomplish the mission of the Board described in section 2286a(a) of this title.

(c) Regulations

The Board may prescribe regulations to carry out the responsibilities of the Board under this subchapter.

(d) Reporting requirements

The Board may establish reporting requirements for the Secretary of Energy which shall be binding upon the Secretary. The information which the Board may require the Secretary of Energy to report under this subsection may include any information designated as classified information, or any information designated as safeguards information and protected from disclosure under section 2167 or 2168 of this title.

(e) Use of Government facilities, etc.

The Board may, for the purpose of carrying out its responsibilities under this subchapter, use any facility, contractor, or employee of any other department or agency of the Federal Government with the consent of and under appropriate support arrangements with the head of such department or agency and, in the case of a contractor, with the consent of the contractor.

(f) Assistance from certain agencies of Federal Government

With the consent of and under appropriate support arrangements with the Nuclear Regulatory Commission, the Board may obtain the advice and recommendations of the staff of the Commission on matters relating to the Board's responsibilities and may obtain the advice and recommendations of the Advisory Committee on Reactor Safeguards on such matters.

(g) Assistance from organizations outside Federal Government

Notwithstanding any other provision of law relating to the use of competitive procedures, the Board may enter into an agreement with the National Research Council of the National Academy of Sciences or any other appropriate group or organization of experts outside the Federal Government chosen by the Board to assist the Board in carrying out its responsibilities under this subchapter.

(h) Resident inspectors

The Board may assign staff to be stationed at any Department of Energy defense nuclear facility to carry out the functions of the Board.

(i) Special studies

The Board may conduct special studies pertaining to adequate protection of public health and safety at any Department of Energy defense nuclear facility.

(j) Evaluation of information

The Board may evaluate information received from the scientific and industrial communities, and from the interested public, with respect to—

- (1) events or practices at any Department of Energy defense nuclear facility; or
- (2) suggestions for specific measures to improve the content of standards described in section 2286a(b)(1) of this title, the implementation of such standards, or research relating to such standards at Department of Energy defense nuclear facilities.

(k) Nonpublic collaborative discussions

(1) In general

Notwithstanding section 552b of title 5, a quorum of the members of the Board may hold a meeting that is not open to public observation to discuss official business of the Board if—

- (A) no formal or informal vote or other official action is taken at the meeting;
- (B) each individual present at the meeting is a member or an employee of the Board;
- (C) at least one member of the Board from each political party is present at the meeting, unless all members of the Board are of the same political party at the time of the meeting; and
- (D) the general counsel of the Board, or a designee of the general counsel, is present at the meeting.

(2) Disclosure of nonpublic collaborative discussions

(A) In general

Except as provided by subparagraph (B), not later than two business days after the conclusion of a meeting described in paragraph (1), the Board shall make available to the public, in a place easily accessible to the public—

- (i) a list of the individuals present at the meeting; and
- (ii) a summary of the matters, including key issues, discussed at the meeting, except for any matter the Board properly determines may be withheld from the public under section 552b(c) of title 5.

(B) Information about matters withheld from public

If the Board properly determines under subparagraph (A)(ii) that a matter may be withheld from the public under section 552b(c) of title 5, the Board shall include in the summary required by that subparagraph as much general information as possible with respect to the matter.

(3) Rules of construction

Nothing in this subsection may be construed—

- (A) to limit the applicability of section 552b of title 5 with respect to—
 - (i) a meeting of the members of the Board other than a meeting described in paragraph (1); or

(ii) any information that is proposed to be withheld from the public under paragraph (2)(A)(ii); or

(B) to authorize the Board to withhold from any individual any record that is accessible to that individual under section 552a of title 5.

(Aug. 1, 1946, ch. 724, title I, §313, as added Pub. L. 100-456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2079; amended Pub. L. 101-510, div. C, title XXXII, §3202, Nov. 5, 1990, 104 Stat. 1844; Pub. L. 102-190, div. C, title XXXII, §3202(a), Dec. 5, 1991, 105 Stat. 1582; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 112-239, div. C, title XXXII, §3202(g), Jan. 2, 2013, 126 Stat. 2220; Pub. L. 113-291, div. C, title XXXII, §3203(a), Dec. 19, 2014, 128 Stat. 3903; Pub. L. 114-92, div. C, title XXXII, §3202(b)(2), Nov. 25, 2015, 129 Stat. 1218; Pub. L. 116-92, div. C, title XXXII, §3202(a)(1)(A), (4), Dec. 20, 2019, 133 Stat. 1963, 1964; Pub. L. 116-283, div. C, title XXXII, §3202, Jan. 1, 2021, 134 Stat. 4394; Pub. L. 117-81, div. C, title XXXII, §3202(2), Dec. 27, 2021, 135 Stat. 2235.)

Editorial Notes

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a)(2)(D), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2021—Pub. L. 117-81 substituted “Chairperson” for “Chairman” wherever appearing.

Subsec. (k). Pub. L. 116-283 added subsec. (k).

2019—Subsec. (b)(1)(A). Pub. L. 116-92, §3202(a)(4)(A), substituted “section 2286(c)(6)” for “section 2286(c)(7)”.

Subsec. (b)(3). Pub. L. 116-92, §3202(a)(1)(A), added par. (3).

Subsec. (b)(4). Pub. L. 116-92, §3202(a)(4)(B), added par. (4).

2015—Subsec. (b)(1)(A). Pub. L. 114-92 substituted “in accordance with section 2286(c)(7) of this title, hire” for “hire”.

2014—Subsec. (b)(1)(A). Pub. L. 113-291 substituted “130 full-time employees” for “150 full-time employees”.

2013—Subsec. (j)(2). Pub. L. 112-239 substituted “section 2286a(b)(1) of this title, the implementation” for “section 2286a(1) of this title, the implementation”.

1991—Subsec. (b)(1)(A). Pub. L. 102-190, §3202(a)(1), substituted “150” for “100”.

Subsec. (g). Pub. L. 102-190, §3202(a)(2), substituted “Notwithstanding any other provision of law relating to the use of competitive procedures, the Board may” for “The Board may”.

1990—Subsec. (b). Pub. L. 101-510 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, inserted “including such scientific and technical personnel as the Board may determine necessary,” after “Board,” in subpar. (A), and added par. (2).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-291, div. C, title XXXII, §3203(b), Dec. 19, 2014, 128 Stat. 3903, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2015.”

§ 2286c. Responsibilities of Secretary of Energy

(a) Cooperation

Except as specifically provided by this section, the Secretary of Energy shall fully cooperate

with the Board and provide the Board with prompt and unfettered access to such facilities, personnel, and information as the Board considers necessary to carry out its responsibilities under this subchapter. Each contractor operating a Department of Energy defense nuclear facility under a contract awarded by the Secretary shall, to the extent provided in such contract or otherwise with the contractor’s consent, fully cooperate with the Board and provide the Board with prompt and unfettered access to such facilities, personnel, and information of the contractor as the Board considers necessary to carry out its responsibilities under this subchapter. The access provided to defense nuclear facilities, personnel, and information under this subsection shall be provided without regard to the hazard or risk category assigned to a facility by the Secretary.

(b) Authority of Secretary to deny information

(1) The Secretary may deny access to information under subsection (a) only to any person who—

(A) has not been granted an appropriate security clearance or access authorization by the Secretary; or

(B) does not need such access in connection with the duties of such person.

(2) If the Board requests access to information under subsection (a) in written form, and the Secretary denies access to such information pursuant to paragraph (1)—

(A) the Secretary shall provide the Board notice of such denial in written form; and

(B) not later than January 1 and July 1 of each year beginning in 2020—

(i) the Board shall submit to the congressional defense committees a report identifying each request for access to information under subsection (a) submitted to the Secretary in written form during the preceding six-month period and denied by the Secretary; and

(ii) the Secretary shall submit to the congressional defense committees a report identifying—

(I) each such request denied by the Secretary during that period; and

(II) the reason for the denial.

(3) In this subsection, the term “congressional defense committees” has the meaning given that term in section 101(a) of title 10.

(c) Application of nondisclosure protections by Board

The Board may not publicly disclose information provided under this section if such information is otherwise protected from disclosure by law, including deliberative process information.

(Aug. 1, 1946, ch. 724, title I, §314, as added Pub. L. 100-456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2080; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 116-92, div. C, title XXXII, §3202(c), Dec. 20, 2019, 133 Stat. 1965.)

Editorial Notes

AMENDMENTS

2019—Subsec. (a). Pub. L. 116-92, §3202(c)(1), substituted “Except as specifically provided by this sec-